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September 18, 1998

Hon. Magalie Roman Salas  
Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Room 222  
Washington, D.C. 20554

Re: In the Matter of Pacific Bell Telephone Company;  
Pacific Bell Tariff FCC No. 128; Pacific Bell  
Transmittal No. 1986 - CC Docket No. 98-103

Dear Secretary Salas:

The New York State Department of Public Service (NYDPS) submits this letter, in lieu of Comments on Direct Case, in the above-captioned proceeding. Pacific Bell's Transmittal No. 1986 establishes a new offering, Pacific Bell Asymmetrical Digital Subscriber Line (ADSL) Service, which enables end users to obtain high speed Internet access. Specifically, Pacific Bell contends that an interstate tariff is appropriate because Internet traffic is primarily interstate in nature.

This tariff offering raises a host of issues regarding access to Internet-based services, which we have just begun to analyze. Far more dialogue and debate is required before a final

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determination on the jurisdictional nature of such traffic is made.<sup>1</sup> Our interest in these issues is grounded in the concern that telecommunications networks continue to interconnect efficiently for the exchange of traffic and that bottleneck facilities, such as the local loops, continue to be available at just and reasonable rates. Regulation of the Internet is not at issue.

We recently completed a proceeding on the reciprocal compensation scheme between carriers who transport calls from end users to Internet Services Providers (ISPs). The New York Public Service Commission determined that

"[a] call to an ISP is no different from a call to any other large volume customer, such as a local bank or a radio call-in program. These calls are all local calls and are billed at local rates. They are also treated as local calls for ARMIS Reporting and Separations. The fact that the call may sometimes be handed off and routed within the ISP's computer network(s) or through the Internet backbone does not alter the jurisdictional nature of the call from the end user to the ISP. Indeed, many intrastate communications ultimately connect to other networks."<sup>2</sup>

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<sup>1</sup> In the event that the Commission determines this specific ADSL offering should be tariffed as an interstate offering, it should also make clear that it is in no way prejudging other ADSL applications or configurations, such as telecommuting or telephony.

<sup>2</sup> Case 97-C-1275 - Proceeding on Motion of the Commission to Investigate Reciprocal Compensation Related to Internet Traffic, Order Closing Proceeding (Issued March 19, 1998).

Thus, the Commission determined that calls to local telephone numbers of Internet Service Providers are intrastate telecommunications.

In the instant situation, Pacific Bell is using its own network to deliver the end user's communication to the ISP, rather than handing those calls off to another provider who completes the call to the ISP. The jurisdictional nature of a call does not change if the call is being transmitted by one carrier rather than two. Nor does Pacific Bell's use of a high speed private line in this instance, rather than the public switched network, necessarily change the jurisdictional analysis.<sup>1</sup>

Finally, the Telecommunications Act of 1934, as amended by the Telecommunications Act of 1996 (the Act), prohibits the Commission from regulating matters "for or in connection with

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<sup>1</sup> Claims that Pacific Bell's ADSL service warrants federal regulation because ADSL's interstate traffic vastly exceeds the 10% threshold set for interstate regulation of analogous special access service (Pacific Bell at 13) are misplaced. The Commission's decision to adopt the 10% rule followed a Joint Board recommendation, which did not recommend direct interstate assignment of the cost of all mixed use, special access lines because the Joint Board concluded that such a method would undermine state regulatory authority. MTS and WATS Market Structure, Decision and Order, 4 FCC Rcd 5660, 5665 (1989). Here, the scope and nature of Internet traffic could be used to complete intrastate voice and data communication and, therefore, similar, careful analysis is appropriate.

Letter of New York Department of Public Service  
CC Docket No. 98-103, Pacific Bell Transmittal No. 1986

intrastate communications" (47 U.S.C. 152(b)). Therefore, to the extent that Pacific Bell is using a high speed technology service to enable an end user to reach an ISP within a state, the Commission should make clear that Pacific Bell or any other carrier must make such offers under an intrastate tariff.<sup>1</sup>

Sincerely,



Lawrence G. Malone  
General Counsel

cc: Attached Service List

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<sup>1</sup> Moreover, should the Commission determine that the traffic terminates on the Internet and not at the ISP's point of presence, it is likely that the Internet will be used to complete intrastate voice and data calls. Under these circumstances, Section 152(b) of the Act serves as a ban on Commission regulation.

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